

To: CN=Kathleen Goforth/OU=R9/O=USEPA/C=US@EPA[]
Cc: CN=Doug Eberhardt/OU=R9/O=USEPA/C=US@EPA;CN=Carolyn Yale/OU=R9/O=USEPA/C=US@EPA[]; N=Carolyn Yale/OU=R9/O=USEPA/C=US@EPA[]
From: CN=Karen Schwinn/OU=R9/O=USEPA/C=US
Sent: Tue 2/8/2005 9:54:20 PM
Subject: Re: SWRCB triennial review of Delta stds
Karen Schwinn
Kathleen Goforth 's Mail

Kathy - I don't think I ever responded to your message. The conversation you and Bruce had last fall never filtered up to me. And so I never set up an internal meeting because I didn't hear that you guys had issues/interest in the Periodic Review. Given the status of the Periodic Review and Board 5's triennial review process, it seems addressing the DO issue in your letter to Board 5 is the appropriate vehicle. Perhaps when you have the letter drafted, we can get together. I would like to see where the issues we feel are important in the CV fit into wtr-5's priorities. Thanks. - Karen

Kathleen Goforth
01/28/2005 12:55 PM

To: Karen Schwinn/R9/USEPA/US@EPA
cc: Bruce Herbold/R9/USEPA/US@EPA, Debra Denton/R9/USEPA/US@EPA, Doug Eberhardt/R9/USEPA/US@EPA, Tom Hagler/R9/USEPA/US@EPA
Subject: Re: SWRCB triennial review of Delta stds

Karen -

In my discussions (over a year ago) with RB WQS and TMDL staff about resolving the Delta DO disapproval, the TMDL staff initially cited a concern about upsetting the Deep Water Ship Channel TMDL process as a reason for not addressing the disapproval, but after further discussion, that concern seemed to dissipate and they acknowledged that neither project was really an obstacle to the other. The initial concern was that it had taken so long to get all the stakeholders to agree on targets to use for the TMDL, any discussion of DO objectives for the Delta might "freak out" the stakeholders, resulting in a loss of consensus on the targets. After further discussion, however, the RB's DO TMDL staff said they would avoid that problem by proposing to adopt the agreed-upon target numbers as site-specific objectives to be adopted along with the TMDL, in effect "locking-in" those objectives for the Channel so any changes to the downstream Delta objectives (which currently apply to the Channel) that might result from resolution of the disapproval would not affect them. It appears, however, that they later changed their minds about doing that, since the final TMDL package does not include any site-specific objectives. To begin the process of resolving the disapproval, the TMDL staff committed to prepare and send to me a scope of work for the studies they felt would be needed to develop appropriate DO criteria for the Delta, and I agreed to help them find funding for those studies. To date, they haven't followed through on that either.

Regarding timing, I did mention this issue in an email to Bruce back in October, shortly after I was informed that the Delta triennial had begun; however, it was in the context of "here's stuff relevant to the Delta that I've been working on -- let me know if you want to know more about it, and please keep me informed about what you're doing that might be relevant to this". Sorry, I didn't think, at that time, to more explicitly suggest that this issue be raised to the SB's attention. The message I had received indicated that an internal meeting would be scheduled in the near future to discuss process, timing, and potential Delta Plan triennial review issues in more detail, so I was just acknowledging that message and confirming that I had an interest in participating. I never heard anything more about the meeting nor the triennial review, so I forgot about this until your message below prompted me to raise the issue again. I

don't know if the Delta Plan triennial provides an appropriate avenue for addressing this issue or not, but I just thought I'd ask, since the RB hasn't shown any inclination to do anything about it.

RB5 has just begun the scoping phase of its triennial review of the Sacramento/San Joaquin Basin Plan, so I will, once again, remind the RB of the need to resolve the Delta DO disapproval in my triennial review recommendations letter to the RB, which I am aiming to send by 2/11. If you see any opportunity, in the context of the Delta Plan triennial review or otherwise, to encourage the State Board to either reinforce that message to the RB or resolve the disapproval itself, please let me know.

Thanks,

-Kathy

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Karen Schwinn
01/15/2005 02:50 PM

To: Kathleen Goforth/R9/USEPA/US@EPA
cc: Doug Eberhardt/R9/USEPA/US@EPA, Debra Denton/R9/USEPA/US@EPA, Bruce Herbold/R9/USEPA/US@EPA, Tom Hagler/R9/USEPA/US@EPA
Subject: Re: SWRCB triennial review of Delta stds

I don't know enough to answer your question, Kathy. Regarding the State Board process, they requested the issues be identified back around August-September, and I don't think this is something anyone raised. So we'd have to ask them whether it's too late.

As you probably know, the CV Board is bringing a DO TMDL for the Stockton Ship Channel for Board approval in late January. How does this issue relate to what that TMDL is based on?

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-----Kathleen Goforth/R9/USEPA/US wrote: -----

To: Doug Eberhardt/R9/USEPA/US@EPA, Karen Schwinn/R9/USEPA/US@EPA
From: Kathleen Goforth/R9/USEPA/US

Date: 01/14/2005 06:23PM

Subject: Re: SWRCB triennial review of Delta stds

I'm wondering if the Delta Plan triennial review might open up an alternate avenue for resolving our May 2000 disapproval of the revisions to the Sac/San Joaquin Basin Plan's dissolved oxygen objectives for the Delta, since we haven't been able to make any progress with the Regional Board on that one. When I last discussed the disapproval with RB5 staff (over a year ago), they said that a major study of DO in the Delta would be needed to develop appropriate objectives. They agreed to scope out what such a study would entail, and I agreed to help look for \$\$ to fund the effort; however, they never followed through with the scoping, so nothing ever happened. Perhaps we should try to engage the State Board on this issue? Here's the text of our disapproval. Let me know if you think the Delta Plan triennial review provides an appropriate opportunity to raise this to the State Board.

"EPA disapproves the removal of the general dissolved oxygen (DO) objectives for waters within the legal boundaries of the Delta, which resulted from rearrangement of the text of the DO objectives. Prior to the adoption of RB Resolution 94-380, the general DO objectives, which specify percent saturation requirements, applied to all Delta waters, and constituted the only DO objectives for those Delta waters ?which are constructed for special purposes and from which fish have been excluded or where the fishery is not important as a beneficial use?. By rearranging the text, the Regional Board eliminated the applicability of the general DO objectives to any Delta waters, and left those water bodies ?which are constructed for special purposes and from which fish have been excluded or where the fishery is not important as a beneficial use? with no DO objectives at all. It is EPA's understanding that this was an unintended result of the amendment. The State provided no rationale for the amendment other than to say, in the associated Staff Report, that the ?Dissolved Oxygen? section was ?reorganized for clarity?.

Several aquatic life uses are designated as existing uses for the Delta. DO objectives are needed to support those uses; therefore, the absence of DO objectives for certain waters within the Delta will not provide the level of water quality necessary to support the existing uses of those waters. With regard to those Delta waters for which specific minimum DO concentration objectives still apply under RB Res. 94-380, the State has not demonstrated that those objectives, alone, are sufficient to protect existing uses and water quality as required under the federal and State antidegradation policies. See, e.g., 40 CFR 131.12 (a)(1) and (2).

To ensure compliance with the CWA and applicable regulations, the State must, within 90 days of receipt of this letter, amend the Basin Plan to either restore the applicability of the general DO objectives to all Delta waters, or apply new DO objectives to ensure that the designated uses of all Delta waters are protected. Any new DO objectives must meet the requirements of 40 CFR 131.11 and 40 CFR 131.12. Guidance for the development of DO criteria is available in EPA's Ambient Water Quality Criteria for Dissolved Oxygen, which was published in 1986." It should be noted that EPA's current (1986) DO criteria guidance recommends against the use of saturation-based criteria, in favor of concentration-based criteria, so, in the long run, it would be preferable for the State to adopt new objectives rather than just reinstate the old objective. Also note that the Basin Plan language regarding constructed waterbodies where "fish have been excluded or the fishery is not important as a beneficial use" appears to be an artifact that no one at the RB can explain. RB staff and I have discussed amending the Basin Plan to delete that language, but that action, too, has been relegated to the RB's back burner.

-Kathy

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Doug Eberhardt

Doug Eberhardt
01/03/2005 02:48 PM
To: Karen Schwinn/R9/USEPA/US@EPA
cc: Kathleen Goforth/R9/USEPA/US@EPA
Subject: Re: SWRCB triennial review of Delta stds

Thanks for the update.
Karen Schwinn/R9/USEPA/US

Karen Schwinn/R9/USEPA/US
01/03/2005 02:36 PM

To
Doug Eberhardt/R9/USEPA/US@EPA

cc
Alexis Strauss/R9/USEPA/US@EPA, Maria Rea/R9/USEPA/US@EPA

Subject
SWRCB triennial review of Delta stds

Doug -

I want to keep you posted on what we're doing relative to the Board's triennial review of the 1995 WQCP. Let me know if you want more info or want to discuss.

Next week the State Board resumes its workshops on the Delta standards, which they began this fall. We (EPA CalFed types) are discussing what, if anything, we might say. The 2 topics we're most likely to address are:

- the chloride standard near Contra Costa. - We would be joining DHS, RWQCB and CBDA in saying this std should remain in place, even though the pulp mill for which it was designed to benefit is gone, since it has benefits to dw for CCWD and should not be changed until the CVRWQCB's process to develop a CV Drinking Water policy is completed. The Board(s) will then have the info to determine if this std, or some other std, is appropriate to protect dw.

- x2 - We would be saying, at a minimum, that the std is working, continues to be scientifically supported and need not change. Then, depending on whether an opposing view is presented, we would discuss a proposed decision-making process that's been developed by an agency-stakeholder group to avoid the occasional upstream impacts that the operators haven't adequately prevented.

The Board has 15 more days of workshops scheduled, but we expect these 2 issues to come up in the next 2 weeks. As we prepare written material, I'll send it up. - KS

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Water Division

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